

MAY 2026

BACKGROUND

- The 2018 Farm Bill descheduled hemp (cannabis with less than 0.3% delta-9 THC) from the Controlled Substances Act (CSA) list of schedules, thereby decriminalizing it at the federal level.
- Because the 2018 Farm Bill was silent on other types of THC and THC-like cannabinoids, hemp products that produced effects similar to marijuana products became legal to manufacture and sell.
- As a result, a largely unregulated industry for hemp-derived THC products emerged in recent years, leading to public health concerns around product access and product safety.
- In November 2025, President Trump signed legislation redefining hemp under federal law. The new law replaces the prior definition based solely on delta-9 THC with a “total THC” standard, redefining hemp as cannabis containing no more than 0.3% total THC on a dry-weight basis. When the law takes effect in November 2026, it is expected to prohibit most intoxicating hemp-derived products currently available on the market.

What is the current federal legal status of hemp?

The 2018 Farm Bill established the foundation of modern federal hemp policy by defining hemp as cannabis containing no more than 0.3% delta-9 THC on a dry weight basis. This bill decriminalized hemp by removing it from the Controlled Substances Act (CSA). The 2025 law changing hemp's definition does not take effect until November 12, 2026.

How were hemp manufacturers able to make intoxicating hemp-derived products?

Because the 2018 Farm Bill's definition of hemp narrowly focused on delta-9 THC, it did not account for total THC (including THCa) or the emergence of other intoxicating cannabinoids like THC-O, Delta 8, and Delta-10 THC. As a result, the law created a regulatory gap that allowed for the rapid expansion of intoxicating hemp-derived cannabinoids.

What changes are forthcoming to the federal legal status of hemp?

On November 12, 2025, President Trump signed H.R. 5371 into law. The law substantially narrows the definition of hemp by incorporating a total THC standard, separating industrial hemp from cannabinoid hemp products, and establishing new THC thresholds and exclusions for products. It also directs the Food and Drug Administration (FDA) to further define key terms that will determine what products are permissible under the framework. The law takes effect 365 days after enactment—on November 12, 2026—providing a one-year transition period.

Does the impending ban of intoxicating hemp-derived products resolve public health concerns?

No. Effectively banning and recriminalizing hemp-derived THC products will not address the most important public health issues around these products. The upcoming changes to hemp's legal status may risk pushing consumers toward unregulated or illicit markets, where products may be less safe and transparent. Meaningful consumer protection is best achieved through regulation, including clear standards for age-gating for minors, testing, labeling, and manufacturing—none of which are fully addressed under the current approach.

Is this a complete ban on hemp-derived THC products?

Technically, hemp-derived products will still be allowed once the changes to the definition of hemp take effect if they contain no more than 0.4 mg of total THC per “container” in a product for retail purchase and do not contain non-naturally occurring cannabinoids. In practice, this will result in a ban of most hemp-derived THC products currently available on the market.

What is the FDA required to do?

The new law stated that within 90 days the FDA had to publish a list of cannabinoids naturally produced by *Cannabis sativa L.*—including THC—class cannabinoids naturally occurring in the plant, as well as other cannabinoids known to have (or marketed as having) effects similar to THC-class cannabinoids. It also requires the FDA to issue additional guidance clarifying the definition of “container.” However, as of publication of this FAQ in May 2026, the FDA still has not issued the congressionally required action.

What did President Trump’s executive order on marijuana say about hemp?

In December 2025, President Trump issued an executive order directing his Department of Justice to take the steps necessary to complete rescheduling marijuana to Schedule III of the Controlled Substances Act. The executive order also called upon the White House to work with Congress to update the legal definition of final hemp-derived cannabinoid products (i.e. legal products available for consumers to purchase) to “allow Americans to benefit from access to appropriate full-spectrum CBD products while preserving the Congress’s intent to restrict the sale of products that pose serious health risks.” The executive order also instructed federal agencies to develop guidance on an upper limit on milligrams of THC per serving with considerations on per container limits and CBD to THC ratio requirements. Finally, the executive order called on federal health officials to develop research methods and models utilizing real-world evidence to improve access to hemp-derived cannabinoid products.

Does Medicare now provide reimbursements for hemp?

No. However, the Centers for Medicare & Medicaid Services has launched a pilot program for hemp products. Under this program, participants can receive up to \$500 worth of hemp products dispensed to them by physicians enrolled in the program. The program is restricted to products that comply with the 2018 Farm Bill, meaning they must contain no more than 0.3% delta-9 THC. It excludes inhalable products and higher-THC or synthetic cannabinoid formulations. The impending changes to the definition of hemp could further limit the availability of eligible products for the program. For more information on the program, please visit the [CMS website](#).

Does the rescheduling of medical marijuana impact hemp?

No, the final order from the Attorney General that rescheduled medical marijuana products from a state-licensed source explicitly said the order does not pertain to hemp under the 2018 Farm Bill.

What is Congress doing about the hemp situation?

Congress is considering several different bills to address the impending ban on hemp-derived products. The American Hemp Protection Act (H.R. 6209) would repeal the ban but would not include any public health regulations. The Hemp Planting Predictability Act (H.R. 7024/S. 3686) would delay implementation of the ban for two years, presumably to allow time for Congress to come up with a regulatory system for hemp products. Bills like the Cannabinoid Safety and Regulation Act (S.3474) and the HEMP Act (H.R. 7212) would call for varying degrees of public health regulation and varying allowances of total THC content for different hemp-derived THC product types. The Hemp Safety Enforcement Act (S. 4315) would allow states to opt out of the hemp ban if they adopt public health regulations and submit a plan to the Department of Agriculture. None of these bills would address the legal status of marijuana.

Why does it matter that hemp and marijuana are regulated differently?

Hemp-derived cannabinoid products and cannabis products often share potential public health risks and serve overlapping consumer markets, but they are currently subject to fundamentally different regulatory frameworks. As federal policy tightens restrictions on hemp without addressing broader cannabis reform, disparities between the two markets may deepen—creating confusion for consumers, challenges for regulators, and ongoing tensions in how similar products are treated.

Ultimately, Congress should establish a comprehensive, unified cannabinoid framework that 1) standardizes regulation, enforcement, and public education across hemp and marijuana, 2) ensures economic parity across markets, and 3) eliminates conflicting policies that treat similar cannabinoid products differently.

What will happen when the ban takes effect?

Once the ban takes effect, hemp-derived THC products that don't meet the new definition of either industrial hemp or cannabinoid hemp products will be placed back on Schedule I of the CSA and have the same fully criminalized legal status as marijuana. This means the possibility of arrest and prosecution for manufacturing, transporting, distributing, or even merely possessing these products.

As a practical matter, one can only speculate what will happen when the ban on hemp-derived THC products takes effect. It is possible that the federal government will choose not to enforce the ban for a limited period of time or even indefinitely. It is possible that enforcement could be sporadic or widespread, leaving consumers and businesses with a confusing situation that could result in prosecution and incarceration. Given that marijuana criminalization has disproportionately targeted Black and Brown communities, history indicates that these communities will be at the greatest risk of criminal enforcement of the upcoming changes to hemp's federal legal status.

What is needed?

Congress should pass legislation establishing a comprehensive, unified cannabinoid framework that regulates both hemp and marijuana in a consistent and evidence-based manner. Rather than relying on prohibition-focused approaches, policymakers should prioritize public health, product safety, consumer education, and equitable economic opportunity. Federal standards should include clear requirements for testing, labeling, packaging, potency, manufacturing, and marketing, as well as provide strong youth protections and restrictions on products and advertising designed to appeal to minors.

Congress should also support state authority to regulate cannabinoid products while promoting data collection, research, and cross-state information sharing to help identify regulatory best practices. Federal policy should ensure fair market participation by supporting small, minority-owned, and equity-focused businesses and adopting policies that prevent market monopolization and excessive market consolidation.

For additional information about this resource, please contact Cat Packer, Director of Drug Markets and Legal Regulation at the Drug Policy Alliance, at cpacker@drugpolicy.org